

(2024) 06 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4308, 7655 Of 2024

Ram Kumar And Others

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 04-06-2024

Acts Referred:

Constitution Of India, 1950 — Article 226(3)

Citation : (2024) 06 RAJ CK 0030

Hon'ble Judges : Rekha Borana, J

Bench : Single Bench

Advocate : Rishabh Purohit, Ram Kumar, Akshiti Singhvi, Shakuntla Shekhawat, Hemant Dutt

Final Decision : Allowed

Judgement

Rekha Borana, J

1. The present two writ petitions arising out of a common dispute, were heard together and are being decided by this common order.

2. The facts of the case are that both Shakuntla Shekhawat (petitioner in S.B. Civil Writ Petition No.4308/2024) and Ram Kumar (petitioner in S.B. Civil Writ Petition No.7655/2024) were transferred vide order dated 22.02.2024. Vide the said order, Shakuntla Shekhawat (hereinafter referred to as 'the petitioner') was sought to be transferred from Churu to Hanumangarh and Ram Kumar (hereinafter referred to as 'the respondent') was sought to be transferred from Jaipur to Churu in place of Shakuntla Shekhawat.

3. Shakuntla Shekhawat challenged the order dated 22.02.2024, at the first instance, by way of a writ petition (S.B. Civil Writ Petition No.3603/2024) before this Court. The said writ petition was however, withdrawn on 06.03.2024. Prior to the said withdrawal, an appeal, assailing the order dated 22.02.2024 was preferred by her on 01.03.2024 before the Rajasthan Civil Services Appellate Tribunal, Jodhpur (hereinafter referred to as 'learned Tribunal'). The said appeal

was dismissed by the learned Tribunal vide order 06.03.2024, aggrieved of which, the present writ petition (S.B. Civil Writ Petition No.4308/2024) was preferred.

4. A submission has been made in the writ petition that the transfer of the petitioner Shakuntla Shekhawat has been made just to accommodate respondent No.4 Ram Kumar and that too, solely on the basis of one letter dated 11.01.2024 written by respondent No.3, Ex-Chairman, Municipal Council, Churu. It has therefore been averred that her transfer order was politically motivated.

5. Vide interim order dated 15.03.2024, considering the letter dated 11.01.2024, effect and operation of the order dated 22.02.2024 was stayed and even the relieving order (if any) qua petitioner Shakuntla Shekhawat was stayed. Because of the interim order having been passed in favour of Shakuntla Shekhawat, respondent Ram Kumar was kept APO vide order dated 29.04.2024, aggrieved of which, he preferred the present writ petition (S.B. Civil Writ Petition No.7655/2024) before this Court.

An application under Article 226(3) of the Constitution of India has been preferred by Ram Kumar in S.B. Civil Writ Petition No.4308/2024 for vacation of the interim order dated 15.03.2024.

6. Learned counsel appearing for Ram Kumar submitted that the alleged letter dated 11.01.2024, considering which, this Court proceeded on to pass an interim order in favour of Shakuntla Shekhawat, is a total concocted document, got prepared at behest of Shakuntla Shekhawat herself. In support of the said submission, a newspaper cutting of 17.03.2024 has been placed on record pertaining to some function organised in remembrance of father-in-law of Shakuntla Shekhawat wherein respondent No.3, Ex-Chairman, Municipal Council, Churu was the chief guest. Even Shakuntla Shekhawat was a participant in the said programme. It has therefore been submitted that there is rather a close nexus between petitioner Shakuntla Shekhawat and respondent No.3 Murlidhar Sharma. Meaning thereby, the letter dated 11.01.2024 was cunningly crafted by Shakuntla Shekhawat so as to accrue undue advantage out of it.

7. Counsel further submitted that respondent Ram Kumar had been kept APO in total contravention to the basic provisions of law and just because of the interim order been passed in favour of petitioner Shakuntla Shekhawat whereas the petitioner Shakuntla Shekhawat had since the year 2006 (year of her appointment), remained posted at Churu only. During her complete tenure of service, she had never been transferred out of Churu, her home town and it is for the first time, vide order dated 22.02.2024, she was transferred out of Churu whereas respondent Ram Kumar had, since the year 2006 (year of his appointment), never remained posted at Churu, which is his home town. During his service tenure, initially, he remained posted at Bikaner, then at Sriganganagar and then at Jaipur. It is for the first time that he had been transferred to Churu but just within a span of two months, he has been kept APO

without any valid reason or logic. Learned counsel therefore submitted that the impugned order dated 29.04.2024 deserves to be quashed.

8. Per contra, learned counsel for petitioner Shakuntla Shekhawat submitted that firstly, there is no nexus between the petitioner and respondent No.3, as alleged by the respondent. On the contrary, there is a civil litigation pending between the families of the two. Learned counsel submitted that the petitioner is suffering from serious ailments qua which material has been placed on record and keeping into consideration her ill health, the order dated 22.02.2024 qua her deserves to be set aside. Learned counsel further submitted that even after passing of the interim order dated 15.03.2024, the petitioner was not permitted to join and to perform her duties, by the departmental authorities and respondent Ram Kumar who had joined by then, did not even permit her to sign in the attendance register and hence, she was forced to furnish her attendance via email to the authorities. The said fact is enough to prove that the petitioner's transfer was made just to accommodate the blue eyed officer of the department i.e. the respondent Ram Kumar.

9. Heard learned counsels and perused the material.

10. It is clear on record that the interim order dated 15.03.2024 was passed keeping into consideration the letter dated 11.01.2024 (Annexure-13) alleged to be written by Ex-Chairman of Municipal Council, Churu to the Chief Minister, recommending the transfer of petitioner Shakuntla Shekhawat. This Court is of the clear opinion that the letter dated 11.01.2024 cannot be termed to be a proof of any pleading/fact. A mere averment cannot be said to be a conclusive proof of a fact pleaded. Further, how the said alleged letter came into the petitioner's possession is also not explained. In the circumstances, if the said letter dated 11.01.2024 is to be relied upon, there is no reason whatsoever as to why the newspaper cutting of 17.03.2024 as placed on record by respondent Ram Kumar be not relied upon. The news report clearly reflects may be not a nexus, but definitely an acquaintance of petitioner Shakuntla Shekhawat and respondent No.3 Murlidhar Sharma. Even on comparative terms, a news report of an event would have a higher proposition of reliability as compared to a document merely averred of and not supported by any evidence.

Further, the order dated 22.02.2024 is not an order pertaining to the petitioner alone. Vide the said order, 28 people have been transferred and hence, no malafides, as alleged by the petitioner, can be concluded.

11. Further, as is clear on record, petitioner Shakuntla Shekhawat had remained posted at Churu during her complete tenure of service and she has never been transferred out of Churu whereas respondent Ram Kumar has for the first time been transferred to Churu. As held by the Hon'ble Apex Court in the case of *Shilpi Bose Vs. State of Bihar*; AIR 1991 SC 532, a Government servant holding a transferable post has no vested right to remain posted at one specific place, he is liable to be transferred from one place to the other. Transfer orders issued by the

competent authority do not violate any of his legal rights.

12. Further, the order dated 29.04.2024 whereby the respondent has been kept APO, also cannot be affirmed, the same being contrary to the settled provision of law. Even if it is observed that the said order was passed because of the interim order having been passed in favour of petitioner Shakuntla Shekhawat, the same cannot be said to be justified. However, as this Court is not inclined to interfere with the transfer order of the petitioner, it is not required to delve into the issue further.

13. So far as the other ground raised by counsel for the petitioner pertaining to her medical condition is concerned, this Court cannot go into the question of relative hardship. As held by the Hon'ble Apex Court in the case of State of Madhya Pradesh Vs. S.S. Kaurav; (1995) 3 SCC 270, it would be for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration. If there is any such hardship, it would be open to the person aggrieved to make a representation to the Government and it is for the Government to consider and take appropriate decision in that behalf.

14. In view of the above observations and analysis, the orders dated 22.02.2024 (Annexure-6) and 06.03.2024 (Annexure-15) qua petitioner Shakuntla Shekhawat do not deserve any interference and writ petition (S.B. Civil Writ Petition No.4308/2024) filed by her is hereby, dismissed.

Writ petition (S.B. Civil Writ Petition NO.7655/2024) filed by Ram Kumar is hereby, allowed. The order dated 29.04.2024 passed qua Ram Kumar is hereby quashed and set aside. He would be permitted to rejoin at his transferred place of posting at Churu with immediate effect.

15. The stay petitions, application under Article 226(3) of the Constitution of India and the pending applications, if any, also stand disposed of.